IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M143 of 2016

BETWEEN

ECOSSE PROPERTY HOLDINGS PTY LTD
Appellant

and

GEE DEE NOMINEES PTY LTD
Respondent

RESPONDENT'S SUBMISSIONS

Part I: Certification

1. These submissions are in a form suitable for publication on the internet.

Part II: Issues

2. Two following two issues arise.

   (a) The original parties to the lease amended cl. 4 to delete the words which required the lessee to pay rates, taxes, assessments and outgoings payable by the lessor. Should cl. 4 now be construed to produce the opposite result?

   (b) Having regard to the natural and ordinary meaning of the words used in cl. 13, did the original parties to the lease intend for that clause to operate as an instruction to determine constructional choice for other provisions of the lease?

Part III: Section 78B *Judiciary Act* 1903

3. The respondent considers that a notice under s.78B of the *Judiciary Act* 1903 (Cth) is not required.

Part IV: Facts

4. The respondent contests the facts at [1], [3] and [4] of Part V of the Appellant's Submissions (***AS***). The respondent accepts the facts set out at AS [2] and AS [5].

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5. Croft J did not make a finding of fact as set out in AS at [1]. His Honour found that the only contemporaneous document available was the lease itself (Trial judgment (***TJ***) at [16]). The only other evidence of the parties' intention was that given by Mr Hastings, the solicitor for the lessee (TJ [17]-[20]). Croft J found that Mr Hastings' evidence could only be used to confirm the position as stated in cl. 13 of the lease (TJ [40]).

6. The matters set out in AS [3] were not the subject of factual findings by Croft J. It is accepted that the matters in sub-paragraphs (i) to (vii) formed part of the amendments made to the standard form lease. However, a factual finding that these amendments were made with the intention of achieving, as nearly as practicable, as sale transaction was not made by the trial judge.

7. Additional findings of fact were not made by McLeish JA in the Court of Appeal (AS [4]). The parties proceeded in the Court of Appeal on the basis that the matters identified at AS [4.1] would have been known to a reasonable person in the position of the original parties to the lease (AJ [89]). The matters set out at AS [4.2] were ascertainable from cl. 13 of the lease.

8. The following additional facts are relevant. The leased land was 12.15 hectares and formed part of a larger area of land contained in certificate of title volume 7484 folio 127 (TJ [3]; Appeal Book (***AB***) at ____). The larger parcel of land was one of three *"broadacre"* lots owned by Westmelton (Vic) Pty Ltd (Receiver and Manager Appointed) (***Westmelton***) (TJ [3]). These lots were being subdivided by Westmelton at the time the lease was entered into (TJ [3]). At this time, the leased land was not in a residential zone (AB ____).

9. Mr Ernest Neimann was the receiver and manager of Westmelton. The original lessee under the lease, Mr Peter Morris, was Mr Neimann's stepson (TJ [4]).

10. The lease was a standard form farm lease (TJ [1]). Amendments were made to the standard form document by the solicitors for Mr Neimann and Mr Morris (TJ [17]-[18]).

11. The certificate of title for the larger parcel of land, which included the leased land, records that the land was transferred to Stork Hill Pty Ltd on 11 May 1990. That company lodged a caveat claiming an interest in the land as the purchaser of the fee

simple on 3 June 1989, some 8 months after the lease was executed (AB at ___). The appellant purchased the larger parcel of land in about 1993 for the purposes of rezoning the land and developing it into a residential subdivision (Appeal judgment (*AJ*) [75]; AB __). The appellant became the registered proprietor of the land on 16 June 1994 (AB at ____). The land was subsequently rezoned by the appellant to permit residential development and subdivision (AB ___).

12. The transfer of the lease from the original lessee to the respondent was effected by a contract of sale of business dated 28 May 2004 (AB at TBA). Croft J found that the only asset the subject of this contract appeared to be the balance of the term of the lease (TJ [5]). The consideration specified in the contract was $210,000 (TJ [5]).

13. A separate title issued for the leased land on 7 November 2011 (AB___). Despite the rezoning, the leased land remained rural farming land at the time of the trial (TJ [3]). The 2014 assessment for land tax for the leased land tendered at trial recorded that the "*taxable value*" of the land was $1,933,352 (AB at ___).[1] The appellant is entitled to the reversion of the leased land upon the expiry of the lease (TJ [6]).

Part V: Legislation

14. The Appellant's statement of applicable statutes is not accepted. Annexure A sets out the applicable statutes as they existed at the time the lease was entered.

Part VI: Argument

Introduction

15. The lease was a standard form document and cl. 4, in its unamended form, was a common provision.[2] In its unamended form, cl. 4 read as follows:

> "AND also will pay all rates, taxes, assessments and outgoings whatsoever excepting land tax which during the said term shall be payable by the Landlord or tenant in respect of the said premises (but a proportionate part to be adjusted between the Landlord and Tenant if the case so requires)."

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1 The expression "taxable value" is defined in ss. 3 and 19 of the *Land Tax Act* 2005 (Vic) as an amount equal to the "site value" within the meaning of the *Valuation of Land Act* 1960 (Vic). The expression "site value" is in turn defined in s. 2(1) the *Valuation of Land Act* as the amount which the land might in ordinary circumstances be expected to realise if it were held for an estate in fee simple unencumbered by any lease, mortgage or other charge.

2 The historical origin of such clauses was examined in Ormiston and Phillips JJA in *112 Acland Street Pty Ltd v Australian and New Zealand Banking Group Ltd* (2002) 4 VR 372, 378 [18] - [22].

16. Clause 4 was an adjectival clause with a carefully defined grammatical structure. The words "*AND also will pay*", when read with cl. 3, identified the party to whom the obligation in cl. 4 applied. The words "*all rates, taxes, assessments and outgoings whatsoever excepting land tax*" identified the subject of the clause. The words "*which during the said term shall be payable by the Landlord or tenant in respect of the premises*" identified the characteristics of rates, taxes etc. to which cl. 4 applied and thereby qualified the subject of the clause.

17. Three amendments were made to the clause: first, the exception relating to land tax was deleted; second, the reference to the landlord was removed from the second line of the clause; and third, that part of the clause which dealt with an apportionment of rates, taxes, assessments and outgoings between lessor and lessee was deleted. In its amended form cl. 4 read as follows:

> "AND also will pay all rates, taxes, assessments and outgoings whatsoever ~~excepting land tax~~ which during the said term shall be payable by the ~~Landlord or~~ tenant in respect of the said premises (~~but a proportionate part to be adjusted between the Landlord and Tenant if the case so requires~~)."

Natural and ordinary meaning of clause 4

18. The amendments made to cl. 4 did not change its grammatical structure. The clause remained an adjectival clause. The amendments limited the external characteristics of the rates, taxes etc. to which the clause applied.

19. The natural and ordinary meaning of the words used in cl. 4 (as amended) created an obligation on the lessee to pay the rates, taxes, assessments and outgoings identified in the clause. The external characteristics of the rates, taxes etc. to which the clause applied had to satisfy two criteria: (1) they had to be "*in respect of the premises*"; and (2) they had to be "*payable by the tenant*". The words *"payable by the tenant"*, in their natural and ordinary sense, meant a liability which the tenant had an enforceable obligation to pay, arising independently of the lease.

20. The natural and ordinary meaning of the words used in cl. 4 confirmed that the tenant was not liable to pay taxes, rates, etc. which were payable by the landlord.

Amendments to clause 4

21. It was permissible to look at the deleted words in cl. 4 as an aid in construing the language used (*Codelfa Construction Pty Ltd v State Rail Authority of New South*

Wales (1982) 149 CLR 337, 352-3; *Esso Australia Ltd v Australian Petroleum Agents & Distributors Association* [1999] 3 VR 642, 647 [19]; *A Goninan & Co Ltd v Direct Engineering Services Pty Ltd (No 2)* [2008] WASCA 112 [37] – [40]).

22. The amendments made to cl. 4 strongly supported the lessee's construction of the clause for two reasons. First, the deletion of the apportionment mechanism in parenthesis confirmed an intention that there would be no apportionment of the liabilities referred to in cl. 4. Either the lessee or the lessor would pay all the liabilities in question. This was significant because, at the time the lease was executed, the leased land formed part of a larger parcel of land and did not have a separate title. It was also one of three "*broadacre*" lots owned by the lessor. If cl. 4 was intended to impose an obligation on the lessee to pay liabilities calculated by reference to the lessor's total land holding, or calculated by reference to the value of the larger parcel land, an apportionment mechanism was necessary. Deleting that mechanism suggested that the contracting parties did not consider there would be a need to apportion. Having regard to the lessor's landholding at the time the lease was entered into, that strongly supported the lessee's interpretation of cl. 4. There was no need to include a mechanism to apportion if the liabilities referred to in cl. 4 were limited to those which were imposed on the lessee in the first instance.

23. Second, the deletion of the words "*Landlord or*" was significant. Clause 4 in its unamended form created an obligation by the lessee to pay rates, taxes etc. which were payable either by the lessor or the lessee. The deletion of the words "*Landlord or*" reduced the scope of that obligation. This amendment was a powerful indicator that the parties intended to remove from cl. 4 any liabilities which were payable by the lessor.

Statutory scheme

24. The statutory scheme for the imposition of rates and taxes applicable at the time the lease was entered into confirmed the lessee could be directly liable for a number of the imposts referred to in cl. 4. The fact that the parties were legally represented at the time the lease was documented meant that they can be taken to have known of the legislative scheme (AJ [50] and [128]).

25. As at the date of the lease, general rates were levied upon the lessee as the occupier of the land unless certain limited exceptions applied (s. 267(1)(b) *Local Government*

Act 1958 (Vic) (***1958 LGA***).[3] General rates were levied annually on "*rateable property*" (s. 266(1) *1958 LGA*). The larger parcel of land which included the leased land was the rateable property (s. 251(1) *1958 LGA*). However, general rates could be imposed on a part of land which was not on a separate title and was occupied by someone other than the owner (*A-G v Black* [1959] VR 45, 50; s. 254(3) *1958 LGA*).

26. A lessee who was rated as the occupier of property and who paid the rates due could recover the amount due from the lessor unless the lease provided to the contrary (s. 342(1) *1958 LGA*).

27. In relation to land tax, s. 8 of the *Land Tax Act* 1958 (Vic) provided that land tax was levied on the total unimproved value of all land of which Westmelton was the owner. Section 42(1) of the *Land Tax Act* deemed the lessee to be liable for land tax in certain circumstances. However, that sub-section could only be invoked where the Commissioner formed the opinion that the interested of the legal owner of the land was lessened by the covenants of the lease (s. 42(3) *Land Tax Act*; *Commissioner of Land Tax v City of Melbourne* [1994] 1 VR 486, 490; *112 Acland Street Pty Ltd v Australian and New Zealand Banking Group Ltd* (2002) 4 VR 372, 376 [13]).[4] An example of where that might occur was a 99-year lease for a fixed rent (*112 Acland St* [13]).

28. These provisions supported the lessee's construction of cl. 4 of the lease. First, in relation to rates, on the lessee's construction, cl. 4 of the lease operated to create an obligation on the lessee to pay the rates which were levied upon it. Further, cl. 4 ensured that, if the lessee paid the rates, the amount paid could not be recovered from the lessor under s. 342(1) of the *1958 LGA*. On the lessee's construction, the words "*which ... shall be payable by the tenant*" in cl. 4 were operative words which

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3 This had been the position historically under previous versions of the legislation: see s. 265 *Local Government Act* 1928 (Vic); s. 265 *Local Government Act* 1903 (Vic); s. 257 *Local Government Act* 1890 (Vic); *Horwitz v Boberski* (1901) 26 VLR 501, 509. This position changed under s. 156 of the *Local Government Act* 1989 (Vic) (***1989 LGA***) which imposed liability for rates on the owner. Section 156 of the *1989 LGA* commenced on 1 October 1992: *Victorian Government Gazette* No 26, 4 July 1990, p. 2022.

4 Section 42 of the *Land Tax Act* 1958 was replaced by s. 45 of the *Land Tax Act* 2005 (Vic) which applies to long term leases and continues to provide that the Commissioner may apportion land tax as between the owner of the freehold estate and the lessee if the Commissioner is of the opinion that the value of the freehold owner's interest in the land is lessened by the covenants of the lease. As a consequence of amendments made to s. 42 of the *Land Tax Act* 1958 in 1995, these provisions now only apply to leases entered into before 30 December 1978. These amendments were introduced by s. 29 of the *State Taxation (Further Amendment) Act* 1995 (Vic).

related directly to s. 342(1) of the *1958 LGA* ("*unless under any agreement such rates are payable by him*"). Clause 4 picked up the very words used by the statute.

29. Second, as land tax was levied on Westmelton by reference to the total value of all land of owned by it, if it was the intention of the parties by cl. 4 to make the lessee liable for the land tax levied on Westmelton, it was necessary to have a mechanism for apportionment so that the lessee did not become liable to pay an amount on account of land tax for land it did not occupy. The removal of that mechanism from cl. 4 by the deletion of the words in parenthesis suggested, in the context of the statutory regime dealing with land tax, that the parties did not intend for the lessee to be liable to pay land tax which was levied on the lessor.

30. Third, the statutory regime directly contradicted the case advanced by the lessor at trial to the effect that there were no rates, taxes or assessments which were levied on the tenant to which cl. 4 applied (TJ [25] and [29]).[5] Liability for general rates fell on the lessee. Liability for land tax could be imposed on the lessee if s. 42(3) of the *Land Tax Act* was invoked. Liability for water and sewage rates could also fall on the lessee (s. 98 and s. 176 *Melbourne and Metropolitan Board of Works Act* 1958 (Vic)).

The reasons of the majority

31. The majority in the Court of Appeal applied orthodox principles of construction which were not in dispute. The principles were summarised by McLeish JA at AJ [88] and [92]-[98] (see also AJ [10] per Kyrou JA).

32. In the Court below, the appellant argued that cl. 4 should be construed so that the words "*shall be payable by the tenant*" were either redundant or were included to restate the obligation contained in the first part of the clause (see AJ [13] and [101]). The majority found that the construction advanced by the lessor attributed a clumsy operation of the words "*by the tenant*" in cl. 4. It concluded that lessee's construction of cl. 4 was the more natural reading (AJ [120]). Kyrou JA also concluded that the text of cl. 4, ignoring the deletions, favoured the lessee's preferred construction (AJ [21]).

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5 In this respect, care needs to be taken when approaching the judgment of the trial judge as neither party referred to correct statutory regime at trial (AJ [16] at footnote 10).

33. The majority considered the amendments made to cl. 4 and concluded that the deletion of the words "*Landlord or*" was a strong indicator that the parties considered, and rejected, the possibility that the lessee should pay rates, taxes etc. which were payable by the lessor (AJ [124] - [125]). Kyrou JA also concluded that, based on the text of cl. 4, including the deletions, the lessee's construction was more persuasive (AJ [24]). Using the deleted words in this way was consistent with authority (AJ [96] – [98] and [125]).

34. The majority considered the other provisions of the lease. In relation to cl. 13, it concluded that this clause only explained the term of the lease and the advance payment of rent, but fell short of stating that the parties intended, as far as possible, to replicate a sale and purchase of the land (AJ [115]). It identified several other provisions of the lease which were also inconsistent with that conclusion (AJ [113]). In particular, cl. 6 imposed positive obligations on the lessee to keep the land free from vermin and weeds; cl. 7 restricted the right of the lessee to cut down timber on the land; cl. 10 imposed an obligation to deliver up the premises[6] in good repair and condition; and cl. 12 prohibited the lessee from committing nuisance on the land or from conduct which might prejudice insurance of the premises. The majority also identified that the lease omitted key provisions which would have been expected to be included if a sale and purchase was intended (AJ [116]). These were the absence of an option to purchase at the end of the term, the absence of a right to renew the lease and the absence of any rights in respect of improvements on the land. The failure to include these provisions in the lease meant that the deliver up obligation in cl. 10 had real substance (AJ [116]).

The lessor's construction of clause 4 should be rejected

35. For the following reasons, the lessor's construction of cl. 4 should be rejected.

36. First, the lessor's construction of cl. 4 requires the words "*shall be payable by the tenant*" to be either treated as redundant or to be construed as a restatement of the obligation contained in the first part of the clause (see AJ [13] and [101]). The first construction ignores the grammatical structure of the clause. That grammatical structure confirmed that the words "*shall be payable by the tenant*" had an important

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6 Croft J found that the leased land included a nineteenth century farmhouse (TJ [3]).

role to play in identifying the characteristics of rates, taxes, etc. to which cl. 4 applied.

37. The second construction of cl. 4 advanced by the lessor is circular. The opening words of cl. 4 already identified that the lessee "*will pay*" the liabilities referred to in that clause. There was no need to state again in the same clause that these liabilities are payable by the lessee.

38. Second, the amendments which were made to cl. 4 at the time the lease was executed do not support the construction advanced by the lessor. The submission that the deletion of the words "*Landlord or*" in cl. 4 is neutral should be rejected (AS [2.8]). There was no reason to delete these words if the parties intended to achieve a result which would make the lessee liable for all rates, taxes etc. payable by the lessor. That was the situation which existed before cl. 4 was amended.[7]

39. The lessor's submission that the amendments made to cl. 4 would naturally have been expected to impose a greater burden on the lessee (AS [2.4]) is inconsistent with the amendments in fact made. The amendments to cl. 4 were intended to change the obligations imposed by that clause. As the lessee was liable for the rates, taxes etc. payable by both the lessee and the lessor under the original form of cl. 4, and the parties were making changes to that obligation, the amendments made to cl. 4 do not suggest that the parties were intending to impose a greater burden on the lessee. Had the parties intended to achieve that result, the only amendment necessary was to delete the words "*excepting land tax*" from cl. 4. The amendments in fact made to the clause go much further. The amendments to cl. 4 support the conclusion that the parties were seeking to reduce the extent of the obligations imposed on the lessee rather than increasing them.

40. Third, the lessor's submission that cl. 13 of the lease demonstrates an intention to recreate the conditions which would have existed under an absolute conveyance of the freehold, as far as it was possible to do so, is not supported by the natural and ordinary meaning of the words used in cl. 13 and is not consistent with the obligations imposed by other provisions of the lease.

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7 The only exception being land tax which was excluded from the unamended version of cl. 4.

41. It is accepted that cl. 13 records that, prior to entering the lease, the parties intended to effect a freehold sale for $70,000, that objective could not be achieved, and so the parties instead entered into the lease. However, cl. 13 needs to be construed according to the natural and ordinary meaning of the words used. The clause does not go so far as to state that the parties intended, by the lease, to replicate the conditions of a sale and purchase for all purposes as far as it was possible to do so. It was possible for the parties to have expressed that intention in cl. 13. They did not to do so.

42. There are good reasons why cl. 13 was included in the lease which are unrelated to the intention for which the lessor contends. Clause 13 is the only clause which identifies the amount of the rent which was payable by the lessee. That aspect of the clause was necessary because cl. 2 of the lease was deleted. Clause 13 records that the full amount of rent had been paid at the time the lease was entered. That was necessary given the long-term nature of the lease and the likelihood that, during the term of the lease, the identity of the lessor and the lessee would change.

43. Clause 13 also records that the rental paid was equivalent to the then value of the land. That was relevant because the lease was being executed by the receiver in favour of his stepson. The receiver was under a duty to obtain a proper price for the property (J O'Donovan *Company Receivers and Managers* (1981) p. 125). The inclusion of a clause which confirmed that the amount being paid as rent was equivalent to the value of the land was prudent from the perspective of both the receiver and the lessee.[8]

44. The objective intention of the parties must be ascertained from the lease as a whole (*Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd* (2015) 256 CLR 104, 116 [46]). Clause 13 must therefore be considered together with the other provisions of the lease identified at [34] above. These provisions are not consistent with the intention to replicate, as far as possible, a purchase and sale transaction.

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8 If the lease was not a truly independent bargain it could be set aside on the basis that the transaction was an invalid exercise of power by the receiver (J. O'Donovan *Company Receivers and Managers* (1981) p. 127 citing *Australian and New Zealand Banking Group Ltd v Bangadilly Pastoral Co Pty Ltd* (1978) 139 CLR 195). In that situation, the lessee's interest in the land would be defeated and the original lessee would be left to recover the amount as rent from Westmelton. The question of whether the transaction was at a proper price would be relevant in any application seeking to set the lease aside.

45. The lease also contained implied obligations arising from the landlord and tenant relationship. This included an obligation on the tenant to use the premises in a tenant like manner (*Regis Property Co Ltd v Dudley* [1959] AC 370, 407) and an obligation on the landlord not to derogate from the grant (*Aldin v Latimer Clark, Muirhead & Co* (1894) 2 Ch 437, 443-44). No attempt was made to exclude these obligations from the lease. These implied obligations were also inconsistent with the notion that the parties intended to achieve a freehold sale.

46. The lessor submits that the clauses referred to at [34] above can be explained as being necessary to protect the lessor's interest in the larger land which adjoined the leased land (AS [27]). However, that submission does not explain the reason for retaining the obligation to deliver up the premises in good repair contained in cl. 10, or the obligation in relation to insurance in cl. 12. Further, cl. 7 also appears to have little relevance to the surrounding land, particularly given the exception in that clause which would enable trees to be cut down for fencing and domestic purposes. Nor does that submission explain the reason why no attempt was made to exclude the implied obligations arising from the landlord and tenant relationship.

47. The majority judgment correctly identified that the absence of an option to purchase the land at the end of the term and the absence of an option to renew undermines the conclusion that the parties intended to recreate conditions comparable to a purchase and sale. The lessor's submission that these provisions may have been omitted by inadvertence (AS [2.6]) does not sit well with the fact that the parties had contemplated a purchase and sale of the land before the lease was executed. It also does not sit well with the fact that the parties were legally represented when the lease was prepared.

48. The other provisions of the lease do not support the conclusion that the parties intended to achieve circumstances equivalent to a purchase and sale of the land. The majority was correct to conclude that it would be wrong to proceed on that assumption when construing cl. 4 of the lease (AJ [114]).

49. Fourth, the lessor's submission that the construction of cl. 4 advanced by the lessee was commercially improvident should be rejected. This submission ignores the applicable regime for the payment of rates and taxes at the time the lease was entered into. The lack of commerciality asserted by the lessor (e.g. AS [4.5]) is based on the

incorrect assumption that the lessor was, at the time the lease was entered into, liable to pay *"all rates and taxes"*. In fact, the lessee was liable to pay rates and, in the circumstances of this case, could also be liable to pay land tax, no other taxes being relevant.

50. In a similar way, in so far as the lessor's submissions as to commercial common sense rely on the summary document at AB _____ (AS [2.9]), that document concerns rates and taxes levied during the period 2005 – 2015. It is not a reflection of the liability for rates and taxes imposed when the lease was executed.

51. It should also be noted that, at the time the lease was entered, the land was not zoned residential (AB ___). The lessor took steps to rezone the land to permit residential development (AB ___). When the lease was acquired by the current lessee, the land had been rezoned by the lessor to *"Part Residential 1 / Part Public Park & Recreation Zone"* (AB ___). The lessor rezoned the land even though it was subject to the lease. The lease prevented any development of the land by the lessor, and restricted the extent to which the land could be used for residential purposes (e.g. cl. 7 and cl. 10). To the extent that increases in rates and land tax during the period 2005 to 2015 are due to an increase in the value of the land because of the rezoning, those steps were taken by the lessor with the knowledge that the land was subject to the lease and could not be developed until the lease term expired. The lessor may well be the author of its own asserted commercial difficulty.

52. Further, the lessor's submission ignores that, at the time the lease was entered, Westmelton received more or less the market value for the leased land (TJ [33]) and retained commercial benefits in the form of the reversion. The reversion was transferred as part of the larger parcel of land by Westmelton to Stork Hill Pty Ltd in May 1990. Although little is known about that transaction, Stork Hill Pty Ltd is recorded on the title for the larger parcel of land as a purchaser of the fee simple (AB___). The larger parcel of land was subsequently sold to the appellant. The reversion continues to have value to this day, and there is no basis in the evidence to conclude that any obligation of the lessor to pay rates and taxes is disproportionate to the value of the reversion.

53. It is important to observe that, apart from the lease itself, there was no other admissible evidence[9] which would shed light on the extrinsic details of the transaction so as to identify what was common sense in this particular commercial setting. In has been recognised that a court should be careful in construing a document by reference to commercial common sense without having sufficient information about the extrinsic details of the transaction (*Peppers Hotel Management Pty Ltd v Hotel Capital Partners Ltd* [2004] NSWCA 114 [124] citing *Maggbury Pty Ltd v Hafele Australia Pty Ltd* (2001) 210 CLR 181, 198 [43]).

54. In this respect, the fact that lease was executed by the receiver of Westmelton is at best neutral (AS [1.4]). The reasoning of Kyrou JA at AJ [47], which is relied on by the lessor, assumed that part of the secured property could not be sold. Kyrou JA reasoned that it was therefore understandable that a receiver and manager might enter into a long-term lease. However, the evidence at trial was that the planning scheme imposed restrictions on the subdivision of the land into smaller lots (TJ [19] footnote 12). It did not prevent the sale of the land as a whole. There was no evidence that the larger parcel of land could not be sold. Indeed, the certificate of title for the land suggested that a sale occurred within months of the lease being executed (AB at ___).

55. Further, the reasoning of Kyrou JA (AJ [47]) assumed that obligations to pay rates and taxes were all imposed on the lessor and could not be transferred to the lessee. That was inconsistent with the statutory regime which applied when the lease was entered into.

56. Lastly, the submission at AS [4.6] that lessee can develop the premises for commercial purposes does not assist the lessor. In so far as this submission is intended to refer to rates and land tax, it ignores the statutory regime which applied at the time the lease was executed. In so far as this submission is intended to refer to "*assessments*" or "*outgoings*", there is no evidence that any liabilities falling within these elements of cl. 4 were imposed on the lessor or were at risk of being increased because of the development of the land. Conventionally, the term "*outgoings*" refers to obligations which fall on the occupier of the land (*Lang & Anor v Asemo Pty Ltd* [1989] VR 773, 779.30).

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9 The evidence of Mr Hastings having been rejected by the trial judge at TJ [40].

Role of a statement of intent

57. The submissions advanced by the lessor at AS [3.2] – [3.6] as to the role of a statement of intent ignore the plain and ordinary meaning of the language used in cl. 13 of the lease and are not consistent with established legal principle.

58. Clause 13 gives rise to a constructional choice. The clause may be read as acknowledging an intention expressed in relation to a transaction which did not proceed, namely, the sale of the land to the original lessee. Alternatively, the clause may be read as acknowledging the basis on which the pre-paid rent was calculated and as explaining the long-term nature of the lease. The lessor contends that the clause may also be read as an expression of intention in relation to this transaction.

59. Whatever status is given to cl. 13, the submission at AS [3.2] that the clause constitutes an "*instruction*" as to interpretation of the lease goes well beyond the plain and ordinary language used. The language used did not suggest that the clause was to be read as an instruction to be invoked when interpreting other provisions of the lease. Similarly, the use of cl. 13 to conclusively determined the genesis and purpose of the transaction is not something contemplated by the language of the clause (AS [3.3]). A reasonable business person would not understand cl. 13 to carry this meaning. As noted above, there were other reasons why cl. 13 was included in the lease which were not related to the intention of the parties.

60. Further, the submission that cl. 13 should have greater influence on interpretation than any other provision of the lease is inconsistent with established principles of contractual interpretation which require a contract to be construed as a whole (*Mount Bruce Mining* [46]; *Electricity Generation Corporation v Woodside Energy Ltd* (2014) 251 CLR 640, 565 [35]). Likewise, the submission that cl. 13 can be used to exclude evidence of surrounding circumstances is inconsistent with authority given the constructional choice which exists in cl. 13 and, which the lessor contends, is also present in cl. 4 (*Mount Bruce Mining* [48]).

61. The lessor has not identified sufficient reasons for departing from orthodox principles of construction when considering cl. 13 of the lease.

Part VII: Argument on notice of contention

62. A notice of contention or cross appeal has not been served.

Part VIII: Time estimate

63. The respondent estimates that it will require one hour for the presentation of oral argument.

Dated: 18 November, 2006

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ANNEXURE A

Land Tax Act 1958 (Vic)
No. 6289 of 1958

Relevant provisions as at 19 November 1988, being sections:

3(1) definition of "owner"
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"**Owner**" in respect of land means—

(*a*) every person entitled to any land for any estate of freehold in possession;

(*b*) every person entitled to any land under any lease or licence from the Crown as to which he has any right either absolute or conditional of acquiring the fee-simple;

(*c*) every settler grantor assignor or transferor of land comprised in any settlement grant assignment transfer or conveyance not made *bona fide* for valuable consideration;[2]

(*d*) every person entitled as aforesaid to any land subject to any mortgage;

(*e*) every person entitled to any land partly in one and partly in another or others of the foregoing ways—

and includes every person who by virtue of this Act is deemed to be an owner.

PART II.—NATURE OF TAXATION

Rate of land tax.

6. Subject to this Act there shall in the case of each owner of land be charged levied and collected by the Commissioner and paid for the use of Her Majesty in aid of the Consolidated Revenue for each and every year a duty of land tax upon land for every dollar of the unimproved value thereof in accordance with the provisions of the Second Schedule.

No. 3713 s. 6.
S. 6 amended by Nos. 7315 s. 3 (Sch. 1 Pt. B.), 7773 s. 2 (d), 9071 s. 2 (1).

Land tax, on what land to be assessed.

8. (1) Subject to sub-section (2) tax on land (excluding tax on Crown land) shall in the case of each owner thereof be assessed charged levied and collected by the Commissioner for each year on the total unimproved value of all land of which he is the owner at noon on the thirty-first day of December immediately preceding the year for which such tax is assessed charged levied and collected.

No. 3713 s. 8. Ss. (1) amended by Nos. 6827 s. 4 (1), 8527 s. 6 (1) (a) (b), 9842 s. 6 (a).

(2) Tax on land referred to in paragraph (*b*), (*c*), or (*d*) of sub-section (1) of section 9 which is subject to tax because of the operation of sub-section (2) of section 9 shall be separately assessed charged levied and collected by the Commissioner from the owner thereof for each year on the unimproved value of each parcel of land of which he is the owner at noon on the 31st day of December immediately preceding the year for which such taxation is assessed charged levied and collected as if it were the only land owned by the owner.

Ss. (2) inserted by No. 8527 s. 6 (1) (c), amended by No. 9071 s. 5.

(3) Where portion of a parcel of land (not being a portion of a building) is occupied separately from, or is obviously adapted to being occupied separately from other land in the parcel such portion shall for the purposes of sub-section (2) be regarded as a separate parcel of land.

Ss. (3) inserted by No. 8527 s. 6 (1) (c).

(4) Tax on Crown land shall in the case of each person deemed by section 43 to be an owner thereof be assessed charged levied and collected by the Commissioner for each year on the total unimproved

Ss. (4) inserted by No. 9842 s. 6 (b).

value of all Crown land of which he is such an owner at noon on the 31st day of December immediately preceding the year for which such tax is assessed charged levied and collected.

Ss. (5) inserted by No. 9842 s. 6 (b).

(5) In this section **"Crown land"** means land of which a person is deemed by section 43 to be the owner for the purposes of this Act.

PART IV.—LIABILITY FOR LAND TAX

Lessee liable as if owner.

42. (1) Save as hereinafter provided any person entitled to any leasehold estate in land whether legal or equitable (other than under any lease from the Crown) shall be deemed for the purposes of this Act (though not to the exclusion of the liability of any other person) to be the owner of the fee-simple of the land, and shall be assessed and liable for land tax accordingly. No. 3713 s. 39.

(2) Whenever any person entitled to any leasehold estate is assessed under the provisions of this section there shall be deducted from the tax payable by the owner of the freehold estate in respect of the same land the amount of tax payable by the person entitled to the leasehold estate.

(3) Nothing in this section shall operate to relieve the legal owner of the fee-simple from the payment of tax except in so far as in the opinion of the Commissioner his interest in the unimproved value of the land is lessened by the covenants of any lease thereof and in every such case the Commissioner shall determine the amount of the tax payable by the owner and by the person entitled to the leasehold estate respectively.

Local Government Act 1958 (Vic)
No. 6299 of 1958

Relevant provisions as at 19 November 1988, being sections:

3(1) definition of "owner of any property"
251
254
266
267
342

"Owner of any property."

"Owner of any property" means the person for the time being entitled to receive, or who if the same were let to a tenant at a rack-rent would be entitled to receive the rack-rent thereof.

Parts X. and XI. substituted by No. 7835 s. 3.*

PART X.—RATES

DIVISION 1—RATEABLE PROPERTY

Rateable property. S. 251 substituted by No. 7847 s. 2 (a).

251. (1) All land shall be rateable property within the meaning of this Act except—

(*a*) land the property of the Crown in right of the State of Victoria or which is vested in any Minister of the Crown in right of the State of Victoria or in any public statutory body which is constituted under the law of Victoria or in trustees appointed pursuant to an Act of the Parliament of Victoria to hold the land on trust for public or municipal purposes or in any municipality—

(i) which is used exclusively for public or municipal purposes; or

(ii) which is unoccupied;

(*b*) land used exclusively for charitable purposes;

(*c*) land vested in or held in trust for any religious body and used exclusively for either or both of the following purposes:

(i) As a residence of a practising minister of religion;

(ii) Education and training of persons to be ministers of religion;

(*d*) land used exclusively for mining purposes; and

Para. (e) amended by No. 9771 s. 15.

(*e*) land held in trust and used exclusively for purposes of—

(i) a memorial to persons who served in the war which commenced in the year 1914 or the war which commenced in the year 1939 or who served in any other war or hostilities or special assignment for the time being specified for the purposes of the *Patriotic Funds Act* 1958; or

(ii) a club the members of which are persons who served in the war which commenced in the year 1914 or the war which commenced in the year 1939 or who served in any other war or hostilities or special assignment for the time being specified for the purposes of the *Patriotic Funds Act* 1958; or

Sub-para. (iii) inserted by No. 9224 s. 2.

(iii) any sub-branch of the Returned Services League of Australia; or

Sub-para. (iv) inserted by No. 9402 s. 20.

(iv) the Air Force Association (Victoria Division); or

Sub-para (v) inserted by No. 9771 s. 15.

(v) the Australian Legion of Ex-Servicemen and Women (Victorian Branch).

*Note: For a record of amendments made to previous sections 251 to 340 see Index to Victoria Statutes 1968.

(2) Land shall be deemed not to be used exclusively for public or municipal purposes if—

(*a*) it is used for banking or insurance purposes;

(*b*) it is land upon which is situated a house or flat used for residential purposes which is in the exclusive occupation of any person including a person who is required to reside there in order to carry out duties required of him; or

(*c*) it is used for the purposes of— Para. (c) amended by No. 9182 s. 3 (a) (b).

* * * * * * * Sub-para (i) repealed by No. 9921 s. 255.

(ii) the Metropolitan Fire Brigades Board.

* * * * * * * Sub-para. (ii) repealed by No. 9182 s. 3 (b).

(3) Where part of any single rateable property vested in or the property of any person or body referred to in paragraph (*a*) of sub-section (1) is used exclusively for public purposes that part of the property shall not be rateable.

(4) Land shall be deemed not to be used exclusively for charitable purposes if—

(*a*) part of the land is separately occupied and is used for any purpose which is not an exclusively charitable purpose;

(*b*) it is land upon which is situated a house or flat used for residential purposes which is in the exclusive occupation of any person including a person who is required to reside there in order to carry out duties required of him;

(*c*) it is used for the retail sale of goods; or

(*d*) it is used for carrying on a business for profit unless such use is necessarily involved in or merely incidental to the charitable purpose.

(5) Where part of any property which is a single property for rating purposes is used exclusively for charitable purposes that part of the property shall not be rateable.

(6) Where any land which is not rateable property under this section because it is used for any of the purposes specified in paragraphs (*b*) (*c*) and (*e*) of sub-section (1) becomes rateable property or becomes land described in paragraph (*a*) of sub-section (1) there shall be payable to the council of the municipality in respect of the said land an amount equal to the difference between the total of the amounts which were paid or payable in respect of such land as rates or in lieu of rates for each of the five years immediately preceding the land so becoming rateable property or becoming land described in paragraph (*a*) of sub-section (1) and the total of the amounts of the rates which would have been payable in respect of such land in each of those years if such land had then been rateable property. Ss. (6) substituted by No. 8291 s. 10 (1), amended by No. 8781 s. 10 (a) (b).

(7) The provisions of this section shall extend and apply to the city of Melbourne and the city of Geelong.

DIVISION 2 —VALUATIONS

(1) *General Provisions*

254. (1) In this Part, unless inconsistent with the context or subject-matter—

"Capital improved value." Amended by No. 8291 s. 11 (1) (a) (i).

"Capital improved value" of land means the sum which the land, if it were held for an estate in fee-simple unencumbered by any lease mortgage or other charge thereon, might be expected to realize at the time of valuation if offered for sale on such reasonable terms and conditions as a *bona fide* seller might in ordinary circumstances be expected to require.

"Estimated annual value." Inserted by No. 8291 s. 11 (1) (a) (ii).

"Estimated annual value" of any property means the rent at which the property might reasonably be expected to be let from year to year, free of all usual tenants' rates and taxes and deducting therefrom the probable annual average cost

of insurances and other expenses (if any) necessary to maintain such property in a state to command such rent.

"Farm land." Amended by No. 8194 s. 6 (c) (i), S.R. 186/1973 Cl. 10 (a) and Nos. 8781 s. 11, 9575 s. 23 (a).

*"Farm land" means any single rateable property which is not less than 2 hectares in area and which is wholly or mainly maintained or used for the time being by the occupier for carrying on one or more of the following businesses or industries namely, grazing (including agistment) dairying pig-farming poultry-farming fish-farming tree-farming bee-keeping viticulture horticulture fruit-growing or the growing of crops of any kind.

"Improvements." Amended by No. 8291 s. 11 (1) (a) (iii).

"Improvements" in relation to land means all works actually done or material used on and for the benefit of the land, but in so far only as the effect of such work done or material used increases the value of the land, and the benefit thereof is unexhausted at the time of valuation; but does not include work done or material used for the benefit of land by the Crown or by any statutory public body.

"Mortgage."

"Mortgage" includes every charge whatsoever upon land howsoever created if such charge is registered under any Act relating to the registration of deeds or instruments affecting title to land, and includes a transfer or conveyance to a registered building society subject to a deed of defeasance in favour of a borrower.

"Net annual value." Para. (a) amended by No. 8291 s. 11 (1) (a) (iv). Sub-para. (1) substituted by No. 8291 s. 11 (1) (a) (iv).

"Net annual value" of any property means—

(*a*) except in the case of the lands described in paragraphs (*aa*) and (*b*)—

(i) the estimated annual value of the property; or

(ii) five per centum of the capital improved value of the property—

(whichever is the greater);

Para. (aa) inserted by No. 8291 s. 11 (1) (a) (iv).

(*aa*) in the case of any single rateable property being—

(i) farm land;

(ii) a house flat or unit (not being an apartment house lodging house or boarding house) which is in the exclusive occupation of the owner and is used for residential purposes; or

(iii) a house or unit (not being an apartment house lodging

*Note: S. 3 (1) (*a*) (i) of Act No. 9224 reads:

"(*a*) In section 254—

(i) in sub-section (1) at the end of the interpretation of "Farm land" there shall be inserted the following words:

"but if the Council so determines does not include any part of the single rateable property upon which is erected a dwelling-house or which constitutes the curtilage of a dwelling-house";"

S. 3 (1) (*a*) (i) of Act No. 9224 had not been proclaimed at the date of this reprint.

house or boarding house) which is in the exclusive occupation of a tenant and is used for residential purposes—

five per centum of the capital improved value of the property;

(*b*) in the case of parklands, reserves or other lands owned by the Crown or any statutory authority which are occupied (otherwise than under any lease) for pastoral purposes only—the estimated annual value thereof.

"Residential use land."
Inserted by No. 7968 s. 13 (a), amended by No. 8149 s. 6 (c) (ii), substituted by No. 8875 s. 2.

"Residential use land" means any single rateable property—

(*a*) which is a unit or self-contained dwelling-house used solely for residential purposes;

(*b*) which is situated in the municipal district of a municipality in which rates are levied in whole or in part on the site value of rateable property; and

(*c*) the site value of which or in the case of a unit the site value of the larger property of which the unit forms a part has been declared by a valuer responsible for making valuations within the municipal district concerned to have been materially increased by reason that it is suitable for development or further development which is allowed by or pursuant to any relevant planning scheme or interim development order.

"Site value."

"Site value" means site value within the meaning of section 315A.

"Unimproved capital value."
Amended by No. 8291 s. 11 (1) (a) (v).

"Unimproved capital value" of land means the sum which the land, if it were held for an estate in fee-simple unencumbered by any lease, mortgage or other charge thereon, might in ordinary circumstances be expected to realize at the time of valuation if offered for sale on such reasonable terms and conditions as a *bona fide* seller might be expected to require and assuming that the improvements (if any) had not been made.

"Unit."
Inserted by No. 8291 s. 11 (1) (a) (vi).

"Unit" means—

(*a*) a unit on a registered plan within the meaning of the *Strata Titles Act* 1967;

(*b*) a stratum estate within the meaning of the *Transfer of Land Act* 1958; and

(*c*) a building or part of a building in the exclusive occupation of a person who is entitled to occupation by virtue of being a shareholder in a company which owns the building or a tenant of such a shareholder.

"Urban farm land."
Amended by No. 9224 s. 3 (1) (a) (ii).

"Urban farm land" means any farm land the unimproved capital value or net annual value of which has been declared by the valuer who made the general or supplementary valuation to have been materially increased by reason of its proximity

to land which has been or is being developed for residential, industrial, commercial or other urban purposes or by reason of its proximity to land which has been or is being subdivided into allotments used or intended to be used predominantly for recreational or residential purposes and on which in the opinion of the valuer any farming operations would be ancillary to the predominant use of the land.

Value of improvements.

(2) In estimating the value of improvements on any land for the purpose of ascertaining the unimproved capital value of the land the value of the improvements shall be taken to be the sum by which the improvements upon the land are estimated to increase its value if offered for sale on such reasonable terms and conditions as a *bona fide* seller might in ordinary circumstances be expected to require.

Ss. (2A) inserted by No. 9224 s. 3 (1) (a) (iii).

*(2A) Where it is necessary to determine the value of any single rateable property which partly consists of farm land, the valuer shall value the property as a whole but shall apportion the value between that part of the property which consists of farm land and the remainder of the property.

Computing value of portions.

Ss. (3) amended by No. 8291 s. 11 (1) (b).

(3) Where it is necessary to determine the capital improved value, the site value or the unimproved capital value of any rateable property in respect of which any person is liable to be rated but which forms portion of a larger property, the capital improved value the site value and the unimproved capital value of each such portion shall be as nearly as practicable the sum which bears the same proportion to the capital improved value, the site value and the unimproved capital value respectively of the whole property as the estimated annual value of the portion bears to the estimated annual value of the whole property.

Ss. (3A) inserted by No. 8527 s. 4 (3), amended by No. 8781 s. 12 (1).

(3A) Where it is necessary to determine the site value or the unimproved capital value of a unit described in paragraph (*a*) or paragraph (*b*) of the interpretation of "unit" the provisions of sub-section (3) shall apply and for this purpose a unit forms part of a larger property being the land comprised in the strata subdivision.

Valuation of lots under *Cluster Titles Act* 1974.

Ss. (3B) inserted by No. 8781 s. 12 (2).

(3B) Where it is necessary to determine the capital improved value, the site value, or the unimproved capital value of an occupancy of a lot or lots on a subdivision under the *Cluster Titles Act* 1974 such occupancy shall constitute a single rateable property and shall be deemed to include any interest in occupied common property and accessory lots but shall not be taken as forming part of a larger property.

Ss. (3C) inserted by No. 9129 s. 5.

(3C) Notwithstanding anything in this Act the capital improved value and the site value of any rateable property which is, or part of which is, land which is the subject of a covenant under sub-section (1) of section 3A of the *Victoria Conservation Trust Act* 1972 shall be

*Note: sub-section (2A) was not in operation at the date of this reprint. It will become operative when s. 3 (1) (*a*) (iii) of Act No. 9224 is proclaimed.

calculated on the basis that the owner of such land is bound by such convenant as to the development or use of the land or part of the land (as the case may be).

Special concession in case of forests. No. 6254 s. 90. Ss. (4) amended by No. 8291 s. 11 (1) (c), S.R. 186/1973 Cl. 10 (b).

(4) Where any area of land not less than 4 hectares in extent is planted after the commencement of the *Forests Act* 1907 with trees approved of by the Forests Commission as being suitable for mining or commercial purposes, such trees being planted not more than 3 metres apart from each other, then in computing the net annual value of such area of land, the increase in the value of such area of land by reason of the trees so planted thereon shall not be taken into consideration.

Ss. (4A) inserted by No. 9667 s. 64 (1)†.

(4A) Notwithstanding anything in this Act the capital improved value the net annual value and the site value of any rateable property which is registered land within the meaning of the *Historic Buildings Act* 1981 or on which there is situated a registered building within the meaning of the *Historic Buildings Act* 1981 shall be calculated on the basis—

(*a*) as to the part actually occupied by the registered building—

(i) that the land may be used only for the purpose for which it was used at the date of valuation;

(ii) that all improvements on that land as at the date of valuation may be continued and maintained in order that the use of the land as referred to in sub-paragraph (i) may be continued; and

(iii) that no improvements, other than those referred to in sub-paragraph (ii), may be made to or on that land;

(*b*) as to any part (not actually occupied by the registered building and not being registered land) that the registered building cannot be removed or demolished and that any land referred to in sub-paragraph (*c*) cannot be subdivided or developed unless a permit to subdivide or develop the land has been granted by the Historic Buildings Council;

(*c*) as to any registered land that the land cannot be subdivided or developed or where a permit to subdivide or develop the land has been granted by the Historic Buildings Council that it can be subdivided or developed only in accordance with that permit.

Valuation of lands held under certain licences. Ss. (5) amended by Nos. 7847 s. 2 (c), 8291 s. 11 (1) (d).

(5) Notwithstanding anything in this Act—

(*a*) the capital improved value the unimproved capital value and the site value respectively of any parklands reserves or other lands owned by the Crown or any statutory authority which are occupied (otherwise than under any lease) for

† Note: Transitional Provisions in No. 9667 s. 64 (2).

pastoral purposes only shall for the purposes of this Act be taken to be twenty times the net annual value thereof; and

(*b*) the capital improved value the unimproved capital value and the site value respectively of unused roads and water frontages licensed under Part XIII. of the *Land Act* 1958 or any corresponding previous enactment shall for the purposes of this Act be taken to be twenty times the annual licence-fee payable for the same under the said Part XIII.

Valuers to be qualified.

Ss. (6) amended by No. 8405 s. 8 (a).*

(6) Every valuation made under this Act shall be made by one or more valuers each of whom is—

(*a*) a person appointed by the council who holds an appropriate certificate of qualification issued by the Valuers' Qualification Board and is a registered valuer; or

Para. (b) amended by No. 9225 s. 9.

(*b*) where a valuer so qualified and acceptable to the council is not reasonably available, the Valuer-General or a valuer nominated by him.

Ss. (6A) inserted by No. 7968 s. 12 (b), amended by No. 9575 s. 23 (b).

(6A) For the purposes of sub-sections (6H), (6HA) and (6I) there shall be appointed a committee to be known as the Municipal Valuation Fees Committee which shall consist of three members of whom one shall be the Valuer-General (who shall be chairman) and two shall be appointed by the Governor in Council as follows:

(*a*) One shall be selected from a panel of not less than five names submitted to the Minister by the governing body of the Municipal Association of Victoria; and

(*b*) One shall be selected from a panel of not less than five names submitted to the Minister by the governing body of the Victorian Division of the Commonwealth Institute of Valuers—

but if either of the said governing bodies fails to submit such a panel of names within one month after being requested to do so in writing by the Minister the Governor in Council may appoint any suitable person to be a member of the Committee.

Ss. (6AB) inserted by No. 10019 s. 22 (a).

(6AB) The Governor in Council may appoint a deputy for each of the appointed members from each of the panels of names submitted to the Minister under sub-sections (6A) (*a*) and (6A) (*b*) to act for the respective appointed member in the event of the illness or absence of that appointed member and the deputy may exercise the powers and perform the duties of the appointed member during the illness or absence.

*Note: S. 51 of Act No. 9575 affects the construction of Ss. 254 (6) as in force immediately before the commencement of s. 3 of Act No. 7835 which substituted Parts X. and XI. of the Principal Act.

Ss. (6B) inserted by No. 7968 s. 12 (h).

(6B) The members of the Committee (other than the chairman) shall hold office for a term of three years and shall be eligible for re-appointment.

Ss. (6C) inserted by No. 7968 s. 12 (h).

(6C) The office of a member of the Committee (other than the chairman) shall become vacant if—

(*a*) he dies, or resigns his office by writing under his hand addressed to the Minister; or

(*b*) he is removed from office by the Governor in Council.

Ss. (6D) inserted by No. 7968 s. 12 (h).

(6D) In the event of a casual vacancy occurring in the office of any member of the Committee (other than the chairman), the Governor in Council may appoint a suitable person to fill such vacancy, and any person so appointed shall hold office for the remainder of the term of office of the member in whose place he is appointed.

Ss. (6E) inserted by No. 7968 s. 12 (h), repealed by No. 10019 s. 22 (b).

* * * * * * *

Ss. (6F) inserted by No. 7968 s. 12 (h), amended by No. 10019 s. 22 (c).

(6F) The appointed members of the Committee and the deputy members shall be entitled to such fees as are from time to time determined by the Governor in Council.

Ss. (6G) inserted by No. 7968 s. 12 (h).

(6G) Subject to this section, the Committee may regulate its own proceedings.

Ss. (6H) inserted by No. 7968 s. 12 (h).

(6H) The Municipal Valuation Fees Committee shall, when so requested by the council of a municipality, make such enquiries as it believes proper in the circumstances for the purpose of fixing a minimum fee to be paid for the making of a general valuation of rateable property within the municipal district and, after the council has given notice of its intention to cause a general valuation to be made, determine the minimum fee accordingly.

Ss. (6HA) inserted by No. 9575 s. 23 (c).

(6HA) If the council of a municipality is of the opinion that circumstances exist which render a determination of a minimum fee made by the Municipal Valuation Fees Committee under sub-section (6H) inappropriate it may advise that Committee of those circumstances and request it to re-determine the minimum fee to be paid for the making of a general valuation of rateable property within the municipal district and the Municipal Valuation Fees Committee upon such a request being made shall take into consideration the matters raised by the council and, if the council so requires, shall permit a person or persons to appear before it on behalf of the council to make submissions with respect to the request and it shall re-determine the minimum fee and the fee so re-determined shall, for the purposes of paragraph (*b*) of sub-section (6I), be deemed to be the fee determined by the Municipal Valuation Fees Committee.

(61) No person who is not a full-time employé of the council or of a group of councils shall be appointed to make a valuation other than a supplementary valuation unless— Ss. (61) inserted by No. 7968 s. 12 (h), amended by No. 10019 s. 22 (d).

* * * * * * *

(*b*) the person so appointed has submitted an application in writing to the council or a group of councils expressing his willingness to carry out the valuation for a fee determined by the Municipal Valuation Fees Committee or such higher fee as may be decided upon by the council or group of councils, and the Valuer-General has first certified in writing that he is of the opinion that the other conditions of engagement are adequate and proper to enable a satisfactory valuation to be made. Para. (a) repealed by No. 10019 s. 22 (d).

* * * * * * * Ss. (7) repealed by No. 7968 s. 12 (i).

(8) For the purposes of this Act any two or more municipalities may agree to form a valuation group and to constitute a committee to employ a qualified person or persons to make valuations under this Act for the municipalities which are members of the group. Valuation groups.

(9) Every such agreement shall assign a name to the valuation group and shall provide for—

(*a*) the appointment of a committee to manage the group;

(*b*) the regulation of the proceedings of the committee;

(*c*) the powers and duties of the committee;

(*d*) the constitution and dissolution of the group, the admission of new members to the group and the withdrawal of members from the group;

(*e*) the appointment and removal of valuers and other officers for the purposes for which the group is constituted;

(*f*) the apportionment of the costs and expenses incurred by the committee amongst the members and the distribution or apportionment of the assets of the group on its dissolution or on the withdrawal of any member from the group; and

(*g*) any other matter or thing necessary or expedient for carrying out the functions of the group.

(10) Every agreement under this section shall be subject to the approval of the Governor in Council and shall take effect on publication in the *Government Gazette* of a notice that such approval has been given.

(11) The committee of every valuation group shall cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the group and shall cause to be made up in each year proper accounts of the group for the year ending on 30 September.

S. (12) amended by No. 9283 s. 10 (1).*

(12) The Minister may annually appoint some person holding a certificate issued by the Municipal Auditors Board to audit the accounts of the group and every such auditor shall be entitled to such remuneration from the group as the Minister determines.

S. (13) amended by No. 8405 s. 8 (b).

(13) Notwithstanding anything to the contrary in any Act a supplementary valuation may be carried out by any person qualified to make a valuation pursuant to the provisions of sub-section (6) or by a full-time employé of a council whose appointment has been authorized in writing by the Minister after consultation with the Valuer-General but any such authorization may be made on such terms and subject to such conditions as the Minister thinks fit.

(14) The preceding provisions of this section shall extend and apply to the city of Melbourne and the city of Geelong.

Value how computed.

(15) In every valuation the property rateable shall be computed at its net annual value, its capital improved value and, where so required by the council or another rating authority, its unimproved capital value.

Application of provisions of sub-section (15) to cities of Melbourne and Geelong.

(16) Notwithstanding anything in any Act, the provisions of sub-section (15) shall extend and apply to the city of Melbourne and the city of Geelong, and every Act and enactment relating to the said cities or either of them shall with such adaptations as are necessary be read and construed and take effect accordingly; and, in particular, without affecting the generality of the foregoing, any reference in any such Act or enactment to the annual value of property in the said cities or either of them shall be read and construed and take effect as if it were a reference to the net annual value thereof within the meaning of sub-section (1).

*Note: Saving provisions in s. 10 (2) of Act No. 9283 as follows:

"(2) A person who pursuant to section 254 (12) of the Principal Act was prior to the coming into operation of this section validly appointed by the Governor in Council to audit accounts shall, notwithstanding the amendment of the said section 254 (12) by this section, continue to be validly appointed for the purposes of that sub-section."

DIVISION 3—GENERAL RATES

266. (1) Subject to this Act the council of every municipality shall once at least in every year, and may from time to time as it sees fit, in manner hereinafter mentioned, make and levy rates to be called "general rates" upon either or both the unimproved capital value and the net annual value of each rateable property within the municipal district as shown in the valuation then in force.

S. (2) repealed by No. 8445 s. 2 (1).

* * * * * * *

Minimum rate and exemptions.

S. (3) amended by No. 8445 s. 2 (2), substituted by No. 8875 s. 4 (a).*

(3) Notwithstanding anything to the contrary in this Part or in Part XI. or in the provisions of any Act relating to local government, the council may, if it thinks fit and by the one resolution—

(*a*) fix an amount as the minimum amount payable under any such general rate in respect of every rateable property within the municipal district;

(*b*) exempt rateable properties of any specified class or in any specified area from the whole or any specified part of the minimum amount fixed pursuant to paragraph (*a*).

S. (3AA) inserted by No. 9402 s. 23.

(3AA) Where a property is rateable at the minimum amount payable referred to in paragraph (*a*) of sub-section (3) and is rateable for a lesser period than twelve months the rate to be paid shall be one-twelfth of the minimum amount payable under the general rate for each month or part of a month for which the property is rateable.

†NOTE: When s. 28 (2) (*b*) of Act No. 9771 comes into operation s. 265A shall be repealed. S. 28 (2) (*b*) of No. 9771 was not in operation at the date of this reprint.

*NOTE: S. 5 of Act No. 8875 which reads—

"5. Sub-section (3) of section 266 of the Principal Act as amended by sub-section (2) of section 2 of the *Local Government (Rates) Act* 1973, with the modification that for the words "such general rate" appearing therein there shall be substituted the words "town rate" shall be deemed to have been extended and applied to the city of Melbourne and the city of Geelong by the *Local Government (Rates) Act* 1973."

(3A) Where a property is of a class or in an area in respect of which an exemption has been granted pursuant to paragraph (*b*) of sub-section (3), the sum payable under the general rate in respect of the property shall be— Ss. (3A) inserted by No. 8875 s. 4 (a).

(*a*) in the case of a total exemption, the sum which would have been payable if no minimum amount had been fixed under paragraph (*a*) of sub-section (3);

(*b*) in the case of a partial exemption—

(i) the minimum amount fixed under paragraph (*a*) of sub-section (3) less the partial exemption; or

(ii) the sum which would have been payable if no minimum amount had been fixed under paragraph (*a*) under sub-section (3)—

whichever is the greater.

(3B) Notwithstanding anything in any Act relating to the city of Melbourne or the city of Geelong sub-sections (3) and (3A), with the modification that for the words "such general rate" and "general rate" where appearing therein there shall be read the words "town rate", shall extend and apply to the city of Melbourne and the city of Geelong. Ss. (3B) inserted by No. 8875 s. 4 (a).

(4) Notwithstanding anything to the contrary in this Act (other than sub-section (3)) the council— Farm land and urban farm land. Ss. (4) amended by No. 7968 s. 13 (b) (c) (d), substituted by No. 9224 s. 3 (1) (b).

(*a*) may, and shall if the municipality includes farm land and in the last preceding year it received less than half of its revenue from general rates from such farm land, make and levy a general rate to be known as a farm rate on farm land at a lesser amount in the dollar than the general rate levied on other land (not being urban farm land or residential use land) on which an urban farm rate or a residential use rate has been made and levied pursuant to paragraph (*b*) or paragraph (*c*) and in making the general rate the council shall fix the amount in the dollar by which the farm rate shall be less than the general rate on such other general rateable property;

(*b*) may make and levy a general rate (to be known as the urban farm rate) on urban farm land at a lesser amount in the dollar than the general rate levied in respect of all other rateable property in the municipal district (not being farm land or residential use land on which a farm rate or residential use rate has been made and levied pursuant to paragraph (*a*) or paragraph (*c*)) and in making the urban farm rate the council shall fix the amount in the dollar by which the urban farm rate shall be less than the general rate on such other rateable property;

(*c*) may make and levy a general rate (to be known as a residential use rate) on the unimproved capital value of residential use land at a lesser amount in the dollar than the

general rate levied on other land (not being farm land or urban farm land on which a farm rate or urban farm rate has been made or levied pursuant to paragraph (*a*) or paragraph (*b*)) and in making the residential use rate the council shall fix the amount in the dollar on the unimproved capital value by which the residential use rate shall be less than the general rate on such other rateable property.

Ss. (4A) inserted by No. 8291 s. 13, repealed by No. 9224 s. 3 (1) (c).

* * * * * * *

Ss. (5) amended by Nos. 8875 s. 4 (b), 9162 s. 17 (a), 9224 s. 3 (1) (d), substituted by No. 9402 s. 24.

(5) Where appropriate the council may classify rateable property as farm land and may at any time revoke any such classification, but where the owner or occupier of that property is aggrieved by the classification, the failure or refusal of the council to classify the property or the revocation of the classification of the property he may lodge an appeal against the classification, the failure or refusal to classify the property or the revocation of the classification of the property and the provisions of the *Valuation of Land Act* 1960 and the rules thereunder shall with such adaptations as are necessary extend and apply to the determination of the appeal which shall be heard and determined by a Land Valuation Board of Review constituted by a chairman sitting alone.

Ss. (5A) inserted by No. 8875 s. 4 (c), amended by No. 9225 s. 10 (a), repealed by No. 9402 s. 24.

* * * * * * *

Ss. (6) amended by Nos. 7968 s. 13 (e), 8875 s. 4 (d), 9162 s. 17 (b) (i) (ii), 9225 s. 10 (b), substituted by No. 9402 s. 24.

(6) Where the owner or occupier of a property is aggrieved by the inclusion or exclusion of that property in or from the list of properties declared by the valuer to be urban farm land or residential use land he may lodge an appeal against the decision of the valuer and the provisions of the *Valuation of Land Act* 1960 and the rules thereunder shall with such adaptations as are necessary extend and apply to the determination of the appeal which shall be heard and determined by a Land Valuation Board of Review constituted by a chairman sitting alone.

Ss. (7) amended by Nos. 7968 s. 13 (f) (i) (ii), 9224 s. 3 (1) (e) (i) (ii), 9575 s. 24.

(7) If any rateable property ceases to be urban farm land or residential use land the difference between the sum of the rates paid or payable in each of the five years immediately preceding the date at which it ceased to be urban farm land or residential use land (as the case may be) and the sum of the rates which otherwise would have been levied thereon pursuant to sub-sections (1) and (3) of this section and paragraph (*a*) of sub-section (4) shall thereupon become due and payable but the council may, if it thinks fit, by resolution exempt the rateable property from the whole or any specified part of the amount otherwise payable by virtue of this sub-section.

(8) Where a portion only of a rateable property which has been rated as urban farm land or residential use land ceases to be urban farm land or residential use land (as the case may be) the provisions of sub-section (7) shall apply so that the amount payable shall bear the same proportion to the difference between the said sums as the valuation or valuations on which the rates have been levied on the aforesaid portion of the rateable property bears to the valuation or valuations of the whole property.

Ss. (8) amended by No. 7968 s. 13 (g).

(8A) The provisions of sub-section (7) and sub-section (8) shall not apply in the case of residential use land where the use which was the reason for the declaration by the valuer that the unimproved capital value of the property had materially increased is no longer a lawful use or where, in the opinion of the valuer, the fact that the land may be so used no longer causes a material increase in its unimproved capital value.

Sub-sections (7) and (8) not to apply where land is re-zoned &c.

Ss. (8A) inserted by No. 8781 s. 14.

(9) The word "year" wherever it occurs in this section shall be taken to mean any twelve months ending on the last day of September.

* * * * * * *

S. 265A inserted by No. 7968 s. 13 (h), repealed by No. 9022 s. 12.

How and on whom rates may be made and levied.

* * * * * * *

S. 266A inserted by No. 7968 s. 13 (h), repealed by No. 9022 s. 12.

267. (1) Every general rate which the council of any municipality is by this or any other Act authorized to make or levy shall be made and levied by it—

How and on whom rates may be made and levied.

(*a*) for one year or half a year or such other period less than a year but not less than three months as it thinks fit; and

(*b*) upon every person who occupies any rateable property whatsoever within the municipal district, or if there is no occupier, or if the occupier is—

Para. (b) substituted by No. 7847 s. 2 (d).

(i) any person or body referred to in paragraph (*a*) of sub-section (1) of section 251 and is using the land exclusively for public or municipal purposes; or

(ii) the Crown in right of the Commonwealth of Australia or any public statutory body constituted under the law of the Commonwealth of Australia or any trustees appointed pursuant to an Act of the Commonwealth of Australia and is not liable to pay municipal rates in respect of that occupancy—

then upon the owner of that rateable property.

(2) The provisions of this section shall extend and apply to the city of Melbourne and the city of Geelong.

PART XII.—PAYMENT AND RECOVERY OF RATES AND OTHER MONEYS

DIVISION 1—RECOVERY OF RATES BY LEGAL PROCESS

(1) *From Person Rated*

Occupier rated may pay rates and recover amount paid or deduct it from rent.

No. 5203 s. 340.

Ss. (1) amended by No. 9019 s. 2 (1).

342. (1) Any person rated as occupier of any rateable property who pays any rates due in respect thereof shall (unless under any agreement such rates are payable by him) be entitled to recover before any magistrates' court or by action of debt in any court of competent jurisdiction from the person to whom he is liable to pay rent or to deduct from any rent payable or to become payable by him, the amount so paid by or recovered from him.

(2) The production of the receipts for such rates so paid by or recovered from such occupier shall, on payment of rent, be a good and sufficient discharge for the amount so paid or recovered.

Melbourne and Metropolitan Board of Works Act 1958 (Vic)
No. 6310 of 1958

Relevant provisions as at 19 November 1988, being sections:

98
106
108
176
177

Division 3—Rates and Charges and Recovery Thereof

Rates.

No. 3731 s. 102. S. 98 amended by Nos. 6536 s. 24 (2) (b), 9558 s. 5 (1) (a) (b).

98. (1) The Board may make and levy rates upon the occupiers or owners of land and tenements (being rateable property) within the metropolis subject to its jurisdiction or within any part thereof and all such rates shall be made and levied in accordance with the provisions of this Part relating to such rates.

(2) After one month from the publication in the *Government Gazette* as hereinbefore provided of a notice in the form contained in the Seventh Schedule hereto or to the like effect the occupier or owner of each tenement to which such notice applies shall unless the Board refuses to supply such occupier or owner with water be liable to pay the rates and charges for the supply of water within such tenement notwithstanding that no pipe and stop-cocks are laid to convey such supply or that no water is used in such tenement.

(3) The provisions of sub-sections (2), (2A), (3), (4) and (8) of section one hundred and seventy-five and sections one hundred and seventy-six to one hundred and seventy-nine of this Act as amended by the *Melbourne and Metropolitan Board of Works (Amendment) Act* 1959 shall so far as applicable and with such adaptations as are necessary extend and apply in respect of rates under this Part.

Ss. (3) inserted by No. 6536 s. 8, amended by No. 9735 s. 2 (a).

* * * * * * *

Ss. (4) inserted by No. 9558 s. 5 (1) (b), repealed by No. 9735 s. 2 (b).

Rates to be recoverable from occupier or person using water.

No. 3731 s. 110.
S. 106 amended No. 7876 s. 2 (3).

106. Except where it is otherwise expressly provided in this Part or in any by-law or agreement made under this Part all rates and charges for water and all sums due to the Board under the provisions of this Part shall be paid by and be recoverable from the person requiring receiving or using the water or from the owner or occupier of the land tenement or premises to which the water is supplied.

All charges and sums due to the Board by any person may if not paid on demand be recovered by the Board or its collector in any magistrates' court or any other court of competent jurisdiction.

Occupier may recover from owner certain payments.

108. If the occupier of any premises upon demand made by the Board— No. 3731 s. 112.

pays or is distrained for a greater sum than the rate charge or sum due by him for the period of his occupancy or if such greater sum is recovered from him by the Board;

pays or is distrained for any sum due for laying down to the premises any service pipe which it was the duty of the owner of the premises to lay down or if such sum is recovered from him by the Board—

he may from the rent due or becoming due by him to the owner of the premises deduct any sum so paid by or recovered from him or he may after demand recover the same from the owner in any court of competent jurisdiction.

Rates to be recovered from owner or occupier.

[24]**176.** (1) All rates made under the provisions of this part shall be paid by and be recoverable from the owner of the property for the time being or the occupier or person using the property for the time being and shall until paid be and remain a charge upon such property. No. 3731 s. 180.

* * * * * * * Ss. (2) repealed by No. 6536 s. 24 (2) (e).

(3) Every demand shall set forth all debts to which the property is liable to the Board. Ss. (3) amended by No. 6536 s. 18.

Rights of occupier paying rates.

[24]**177.** In the event of any rates being paid by or recovered from the occupier or person using the property for the time being as aforesaid such occupier or person may deduct all sums of money so paid by him out of the rent unless otherwise provided by lease or agreement from time to time becoming due in respect of the said property as if the same had been actually paid to the owner as part of such rent, or such occupier or person may at his option sue the owner therefor before any court of competent jurisdiction or may recover the same in a summary way. No. 3731 s. 181.

Land Tax Act 2005 (Vic)
No. 88 of 2008

Section 116

Repeal of sections 3(1), 6, 8 and 42 of the *Land Tax Act 1958* (Vic)

Part 9—Further amendments, repeals and transitional provisions

116 Repeal of Land Tax Act 1958

The **Land Tax Act 1958** is **repealed**.

Local Government (Consequential Provisions) Act 1989 (Vic)
No. 12 of 1989

Section 4 (2) and Schedule 3 item 1

Repeal of section 3(1) of the *Local Government Act 1958* (Vic)

Consequential amendments

4. (1) On the coming into operation of an Item in Schedule 2, the Act specified in that Item is amended as set out in that Item.

(2) On the coming into operation of an Item in Schedule 3, the *Local Government Act* 1958 is amended or repealed to the extent set out in that Item.

(3) The *Local Government Act* 1958 as in force after the commencement of sub-section (4) is to be referred to as the *Local Government (Miscellaneous) Act* 1958.

(4) For section 1 of the *Local Government Act* 1958, substitute—

Short Title

"1. This Act may be cited as the *Local Government (Miscellaneous) Act* 1958.".

SCHEDULE 3

AMENDMENT AND REPEAL OF *LOCAL GOVERNMENT ACT* 1958

Item No.	*Provisions*	*Extent of Amendment or Repeal*
1	Sections 1–7	These sections are repealed.

Local Government (Consequential Provisions) Act 1989 (Vic)
No. 12 of 1989

Section 4 (2) and Schedule 3 item 25

Repeal of sections 251, 266 and 267 of the *Local Government Act 1958* (Vic)

Consequential amendments

4. (1) On the coming into operation of an Item in Schedule 2, the Act specified in that Item is amended as set out in that Item.

(2) On the coming into operation of an Item in Schedule 3, the *Local Government Act* 1958 is amended or repealed to the extent set out in that Item.

(3) The *Local Government Act* 1958 as in force after the commencement of sub-section (4) is to be referred to as the *Local Government (Miscellaneous) Act* 1958.

(4) For section 1 of the *Local Government Act* 1958, substitute—

Short Title

"1. This Act may be cited as the *Local Government (Miscellaneous) Act* 1958.".

SCHEDULE 3—*continued*

Item No.	*Provisions*	*Extent of Amendment or Repeal*
25	Parts X. and XI. (except Division 2 of Part X.)	These provisions are repealed.

Valuation of Land (Amendment) Act 1989 (Vic)
No. 55 of 1989

Section 11 (1) (a)

Repeal of section 254 of the *Local Government Act 1958* (Vic)

No. 6299. Reprinted to No.10081 and amended by Nos. 10099, 10107, 10167, 10187, 10191, 10205, 10216, 10219, 10224, 10262, 13/1986, 16/1986, 36/1986, 108/1986, 109/1986, 110/1986, 121/1986, 128/1986, 9/1987, 41/1987, 44/1987, 45/1987, 97/1987, 8/1988, 53/1988 and 75/1988.

Consequential repeals and amendments

11. (1) The following provisions of the *Local Government Act* 1958 are repealed:

(*a*) Sections 254 to 265A;

(*b*) Section 315A.

(2) The Principal Act is amended as follows:

(*a*) In section 2 (1), in the definition of "General valuation" for "property" substitute "land";

(*b*) In section 3 (5), for "property" (wherever occurring) substitute "land";

(*c*) In section 6 (1), for "property" substitute "land";

Local Government (Consequential Provisions) Act 1989 (Vic)
No. 12 of 1989

Section 4 (2) and Schedule 3 item 26

Repeal of section 342 of the *Local Government Act 1958* (Vic)

Consequential amendments

4. (1) On the coming into operation of an Item in Schedule 2, the Act specified in that Item is amended as set out in that Item.

(2) On the coming into operation of an Item in Schedule 3, the *Local Government Act* 1958 is amended or repealed to the extent set out in that Item.

(3) The *Local Government Act* 1958 as in force after the commencement of sub-section (4) is to be referred to as the *Local Government (Miscellaneous) Act* 1958.

(4) For section 1 of the *Local Government Act* 1958, substitute—

Short Title

"1. This Act may be cited as the *Local Government (Miscellaneous) Act* 1958.".

SCHEDULE 3—*continued*

Item No.	*Provisions*	*Extent of Amendment or Repeal*
26	Divisions 1 and 7 of Part XII.	These Divisions are repealed.

Water Acts (Further Amendment) Act 1997 (Vic)
No. 110 of 1997

Section 4 (3)

Repeal of section 98 of the *Melbourne and Metropolitan Board of Works Act 1958* (Vic)

PART 2—AMENDMENT OF MMBW ACT

3. *Definition*

In this Part, **"MMBW Act"** means **Melbourne and Metropolitan Board of Works Act 1958**.

No. 6310.
Reprint No. 8 as at 17 April 1997. Further amended by Nos 38/1997 and 45/1997.

4. *Removal of power to levy water rates*

(1) In the heading to Division 3 of Part II of the MMBW Act, **omit "Rates and"**.

(2) Sections 98, 98A, 98B, 99, 102, 103, 104 and 106A(6) of the MMBW Act are **repealed**.

(3) In section 106 of the MMBW Act, **omit** "rates and".

(4) In section 106A(2) of the MMBW Act, for "rates or amounts levied under this Division upon the registered proprietor of a lot or upon" **substitute** "amounts payable under this Division by the registered proprietor of a lot or".

(5) In section 106A(3) of the MMBW Act, **omit** "rates levied upon and".

(6) In section 107 of the MMBW Act—

(a) **omit** "rate" (wherever occurring);

(b) **omit** "rate,";

(c) **omit** "rates".

(7) In section 108 of the MMBW Act, **omit** "rate".

(8) In section 109(1) of the MMBW Act—

(a) **omit** "rate" (wherever occurring);

(b) **omit** the expression commencing "; and neither such closing" and ending at the end of the sub-section.

(9) In sections 109(3) and 169 of the MMBW Act, **omit** "rates".

(10) In the Eighth Schedule to the MMBW Act—

(a) **omit** "has been rated by the Melbourne and Metropolitan Board of Works at the sum of per annum for the water rate [*or*";

(b) for "said Board]" **substitute** "Melbourne and Metropolitan Board of Works";

(c) **omit** "rate" (where secondly occurring);

(d) **omit** "the collector of rates for".

Water Governance Act 2006 (Vic)
No. 85 of 2006

Section 163

Repeal of sections 106 and 108 of the *Melbourne and Metropolitan Board of Works Act 1958* (Vic)

163. Repeal of Melbourne and Metropolitan Board of Works Act 1958

The **Melbourne and Metropolitan Board of Works Act 1958** is repealed.

Water Acts (Further Amendment) Act 1997 (Vic)
No. 110 of 1997

Section 5 (3)

Repeal of sections 176 and 177 of the *Melbourne and Metropolitan Board of Works Act 1958* (Vic)

PART 2—AMENDMENT OF MMBW ACT

3. *Definition*

In this Part, "**MMBW Act**" means **Melbourne and Metropolitan Board of Works Act 1958**.

No. 6310.
Reprint No. 8 as at 17 April 1997. Further amended by Nos 38/1997 and 45/1997.

5. ***Removal of power to levy sewerage rates***

(1) Section 175 (except sub-section (8)) of the MMBW Act is **repealed**.

(2) Section 175(8) of the MMBW Act is **repealed**.

(3) Sections 176 to 179 of the MMBW Act is **repealed**.

(4) The heading to Division 7 of Part III of the MMBW Act is **repealed**.